



The Court Legacy

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Patents, Automobiles and the Eastern District of Michigan

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The recent *Kearns* cases involving patent claims for the intermittent windshield wiper have focused attention on the stakes involved in patent suits brought by outsiders to the automotive industry.

Many people don't realize that patent law was critical to the development of the automobile industry in the United States. And since the biggest manufacturers were centered in Detroit, many of these critical legal battles were fought in the United States District Court for the Eastern District of Michigan.

In "Monopoly on Wheels," published by Wayne State University Press in 1961, William Greenleaf observed:

The automobile, more clearly than most mechanical creations, illustrates the fact that any notable invention is seldom if ever one man's achievement, but rather that of a number of men, each building on the accomplishments of his predecessors.¹

Greenleaf quoted Waldemar Kaempffert: "Invention implies research . . . The 'heroic' theory of invention, the notion that an idea flashes from a brain and gives the world a sudden, fresh impulse must be dismissed."²

With so much at stake, it is not surprising that inventors and entrepreneurs sought credit for the development of important automobile parts and processes. Patent law helped determine the winners and losers in the automobile industry, and the decisions of the judges of the Eastern District played an important part in that evolutionary process.

The fledgling industry was beset by so many patent problems from its beginnings that one commentator placed patent problems as the industry's most serious concern.³

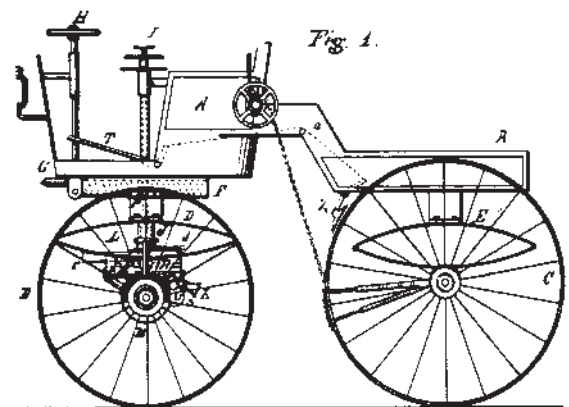
Selden's Claim to Fame

It was a patent lawyer - and not an automobile manufacturer - who got the ball rolling in the legal arena. George Selden filed a patent in his own name for the automobile in 1879. He claimed a date of invention in 1876. He allowed the patent to issue in 1895, sixteen years after filing, without ever building a working automobile.

Selden has been described by commentators as "a consummate master of systematic and intentional delay" and the "prince of procrastinations"⁴ in obtaining his patents, but he worked legally within the parameters of the patent statutes. More than 50 companies built automobiles in that 16-year time frame, all of which were alleged to come within the scope of that patent.⁵

The Selden Patent and other patents for various mechanisms used on automobiles, accessories used on automobiles, or machines and processes used in the production of automobiles bred three responses by the automobile industry at the turn of the century.

First, an organization was formed by the name of ALAM (Association of Licensed Automobile Manufacturers). By 1903, the Association held the rights to 25 percent of the automobile-related patents in existence at that time.



Selden Patent for Gasoline Automobile
(Photo courtesy of Amer. Auto. Manufacturers Association)

ALAM permitted its members not only to use the Selden Patent for a fee, but also to use any patents of any other members without additional compensation. This seemed like a workable solution for most companies either manufacturing automobiles or supplying to those manufacturers.

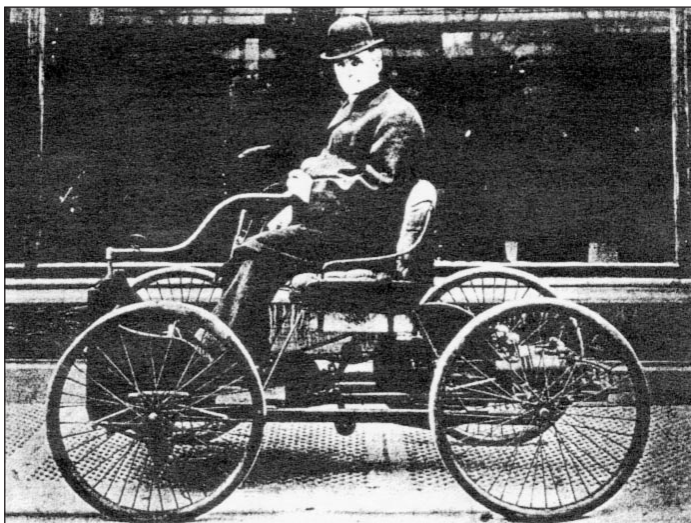
The second response was the one fostered by Henry Ford as a belief in absolutely free competition and the abolition of patents. His battle with Selden is believed to have commenced at the time that Selden refused to give his company a license under the Selden Patent. The dispute progressed to the point that Selden and Ford were in patent litigation continuously from 1903 to 1911.

The third response was a selective mix of the first two responses by entities already inside the industry, taking royalty-bearing licenses on some patents, while opposing others.

The industry particularly abhorred patentees who obtained rights for products that they never made, such as Selden, since no option of cross-license or supplier enticements existed to control them. Ford spoke out against these people regularly and loudly, calling them "parasites."⁶

With this background, a significant amount of patent litigation ensued. The first decade of the twentieth century brought a deluge of infringement suits among individual manufacturers. The United States District Court for the Eastern District of Michigan became the forum for many of these battles.

Almost all of the patent litigation went unreported in the legal reporters, but many reported decisions provide a flavor for the various activities and attitudes over the years.



Henry Ford and his "Quadricycle"
(Photo courtesy of Amer. Auto. Manufacturers Association)

Ford's Victory

Ford "broke" the Selden Patent with his victory in that lawsuit and became the first champion of the automobile industry. This in turn led to the dissolution of the ALAM in 1912 and a subsequent attempt at a "patent pool" commencing in 1914.⁷

In essence, however, Henry Ford went from being an outsider to the industry to an insider in the industry. To maintain his position in the industry without patent licenses, however, Ford had to have his personnel design around patents and not use parts and components patented by others. He also had to build an arsenal of patents that he could control.

It worked. Through 1922, Ford never paid a cash royalty to anyone and worked around patents by either designing a product that did not infringe or by cross-licensing his own patents with those of his competition to acquire rights in what he wanted to use.⁸

Ford Motor Company sued the Cadillac Motor Car Company in 1909 in a fiercely contested battle.⁹ Ford won, but then let Cadillac continue its infringements on a cross-licensing arrangement, reflecting Ford's state of mind at the time, i.e., nearing the end of the Selden Patent lawsuit. As cross-licensing became more and more acceptable, this multitude of lawsuits were settled rather than tried in almost every instance in the Eastern District of Michigan. An example was the suit filed by Zenith Carburetor against Stromberg Motor Devices Co. in 1913, settled subsequent to Judge Tuttle's denial of a Motion to Dismiss.¹⁰ No evidence could be found that either company survived beyond 1920, so the lawsuit itself did not economically advantage either party in the long run.

In 1920, Thomson Spot Welder lost its suit against Ford Motor Company in the Eastern District of Michigan before Judge Killits on a type of electric welder. The patent was found to be invalid.¹¹

Parker Rust Proof

At that same time, according to an oral history given by J. King Harness, who was Henry Ford's personal secretary and in-house patent attorney at the time, the Parker Rust Proof Company approached Henry Ford about taking a license under some patents that Parker Rust Proof had just acquired for a "ravenizing" rust proofing process. Henry Ford turned down the license.¹²

Parker Rust Proof then responded that the license would be royalty-free as long as Henry Ford consented to the validity

of the patents. At that time in the law, such a consent would be tantamount to a victory over the balance of the industry, based on the large size of Ford Motor Company and the evidence of industry respect this would provide in subsequent litigation. Contrary to J. King Harness' advice, Henry Ford refused the royalty-free license, and Harness left the employ of Henry Ford to set up his own patent law firm and commence a longstanding relationship with Walter Chrysler in 1925.¹³

From 1920 to 1924, the automotive industry experienced its first serious economic downturn.¹⁴ Many companies went out of business or merged. For some reason, Ford decided during this period to use the Parker Rust Proof "ravenizing" process on his automobiles. (Of course, they were all black or "raven" in color since Ford didn't believe at this time that an automobile should be any color other than black).

Parker sued and won an injunction in 1925.¹⁵ Parker went through a subsequent accounting and won approximately \$10 million in 1928 in an opinion issued by Judge Tuttle.¹⁶

A noteworthy citation from the opinion is as follows:

The record shows, too, that Mr. Henry Ford, who dominates the defendant corporation, is absolutely opposed to the operation of the present patent system and to the payment of royalties to any one. This is clearly expressed by Mr. Davis, defendant's [Ford's] patent attorney stationed at the plant: There is no power on earth, this side of the Supreme Court of the United States, which would make Henry Ford sign a license agreement or pay a royalty."¹⁷

Parker Rust Proof turned this infusion of capital into such a successful business that the United States pursued Parker Rust Proof under the antitrust laws in the United States District Court for the Eastern District of Michigan in 1945.¹⁸

At this same time, Judge Learned Hand was deciding the scope of the stainless steel patents for Haynes in the Southern District of New York, another critical juncture for the automotive industry.¹⁹ Although Haynes won the lawsuit and was found to be the inventor of stainless steel, his automobile company could not survive the post-war recession (1920 to 1924) and the advent of closed cabin cars (rather than convertibles).

By the end of the 1920s, the American automobile industry was being molded into the series of companies as we know it today.

This is significant because the patent litigation that ensued from that time was either between automotive suppliers or brought by outsiders against the automotive manufacturers. The industry thus had the insiders under control and advanced at a substantial pace.

Outsiders Attack

In the Eastern District of Michigan, the targeting of the automobile manufacturers by outsiders was very evident. In 1930, Gordon Form Lathe Co. sued Ford Motor Company for patent infringement on a tool used in the forming of camshafts for engines, eventually collecting a money judgment before Judge Tuttle in 1943.²⁰

Oxford Varnish Corporation pursued General Motors and many other automobile manufacturers on a patent for giving metal an appearance of wood grain. Judgment in the Eastern District of Michigan against Oxford Varnish Corporation issued in 1938 in opinion by Judge Tuttle invalidating all four patents in suit.²¹

Gurdon Mather sued Ford Motor Company on a patent for a headlight and lost in 1941, after trial before Judge O'Brien.²²

Hazeltine Research, Inc., a patent holding company, sued General Motors on various car radio patents which were all found to be invalid in 1947 in an opinion by Judge Tuttle.²³

Gustav Bobertz sued General Motors on a patent for automobile hoods, but the patent was found to be invalid in an opinion by Judge Koscinski in 1954.²⁴

At the same time automotive suppliers were battling in the Eastern District of Michigan at a different level. Lapeer Trailer sued Fruehauf in 1927 for a detachable and reattachable truck trailer.²⁵ Micromatic Hone lost its lawsuit against Mid-West Abrasive in 1948 before Judge Picard involving a patent on an abrasive cutting stone holder used in many automotive related manufacturing processes, such as boring of cylinders for engines.²⁶

In 1948, American Cutting Alloys lost in a decision by Judge Picard in a suit filed against Carboloy on a carbide cutting tool used in many automotive processes.²⁷

Rubsam Corporation won a patent infringement case in 1937 against Motor Wheel Corp. on mechanisms for centering demountable rims on a vehicle's wheel rim. Motor Wheel was a major supplier at the time and paid a two cent per wheel royalty on virtually all of the new automobiles made in the United States, a substantial sum of money in those Depression Years in the United States.²⁸

And the list goes on.

History Repeats Itself

In recent years patent suits against multiple automotive companies have involved huge sums of money.

The *Kearns* cases²⁹ involve intermittent windshield wipers to increase driving comfort while driving in various amounts of rain. Kearns has taken a position as that of an outsider to the automotive industry. He originally obtained his multitude of patents while working for a supplier of electronics to the automotive industry. The supplier paid for the legal costs of obtaining the various patents.

Under an agreement with the company, the patents reverted to Kearns personally if certain conditions were met or not met. Ultimately, the patents reverted to Kearns and the lawsuits began in 1978. The automotive supplier was not involved. Kearns was awarded in excess of \$15 million by jurors in the Eastern District of Michigan after various lawsuits and has been reported to have been given even more in settlement.

The *Lemelson* cases³⁰ involve a bar code reader and machine vision equipment used in various manufacturing and inventory control processes. Lemelson is reported to have received in excess of \$100 million in settlement from the Japanese automotive manufacturers before filing suit against the American automobile manufacturers.

Lemelson is notable for his public pronouncement that if he settles with the American automobile manufacturers, a certain portion of the settlement should be set aside to improve the paychecks of American automotive engineers in the form of incentive bonuses. Again, Lemelson, via the media, paints a picture of being an outsider to the automotive industry.

It should be noted that Lemelson, who is not an attorney, has filed and obtained hundreds of patents, pro se, and delayed the issuance of patents until the marketplace, i.e., others, has made a commercially significant product. He does not make products that he patents.

These two lawsuits may appear to be unique, but in fact the records of the Eastern District of Michigan show that it is clearly a case of history repeating itself.

¹ Greenleaf, *Monopoly on Wheels* (Wayne State University Press, 1961), page 5.

² Waldemar A. Kaempffert, "Our Defective Patent System", *Outlook*, CI (July 6, 1912), 548-550.

³ *Id.*

⁴ Floyd L. Vaughan, *Economics of Our Patent System* (New York, 1925), p. 192; William Hart, "Better Business", *Everybody's Magazine*, XXX (February, 1914), p. 177.

⁵ Greenleaf, page 244.

⁶ Greenleaf, page 248.

⁷ Greenleaf, pages 244-246.

⁸ Greenleaf, pages 248-249.

⁹ Equity Case 4024, 1909 (Federal Records Center, Chicago).

¹⁰ Case No. 1, 205 F. 158 (E.D. Mich., S.D., February 18, 1913).

¹¹ Case No. 246, 268 F. 836 (E.D. Mich., S.D., October 5, 1920).

¹² 1977 Oral History from J. King Harness.

¹³ *Id.*

¹⁴ Ralph D. Gray, *Alloys and Automobiles* (Indiana Historical Society 1979), pages 189-190.

¹⁵ 6 F. 2d 649 (E.D. Mich. 1925).

¹⁶ 23 F. 2d 502 (E.D. Mich. 1928).

¹⁷ *Ibid.*, 23 F. 2d at 505.

¹⁸ 61 F. Supp. 805 (E.D. Mich., S.D., May 12, 1945).

¹⁹ Ralph D. Gray, *Alloys and Automobiles* (Indiana Historical Society, 1979), pages 159-165.

²⁰ 133 F. 2d 487 (6th Cir. 1943).

²¹ Civil Action No. 7240; 23 F. Supp. 562 (E.D. Mich., S.D., June 6, 1938).

²² Civil Action No. 14892; 40 F. Supp. 589 (E.D. Mich., S.D., April 16, 1941).

²³ Civil Action No. 2426, 2436; 72 F. Supp. 138 (E.D. Mich., S.D., June 23, 1947).

²⁴ Civil Action No. 9399; 126 F. Supp. 780 (E.D. Mich., S.D., August 20, 1954).

²⁵ 24 F. 2d 595 (1927).

²⁶ Civil Action No. 6857; 78 F. Supp. 641 (E.D. Mich., S.D., June 10, 1948).

²⁷ Civil Action No. 5073; 80 F. Supp. 467 (E.D. Mich., S.D., September 24, 1948).

²⁸ 92 F. 2d 129 (64th Cir. 1937), *cert. den.*, 304 U.S. 560 (1938).

²⁹ Civil Action No. 78-70740 (E.D. Mich., S.D.), and others.

³⁰ Civil Action No. CV-N-92-545-ECR (D. Nevada), and others.